IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.471 OF 2005
IN
SUMMARY SUIT NO.668 OF 2005

Mr.Hemant Kumar J. Vaidya ....Plaintiff

V/s.

Shyam Singh Parihar & Ors. ....Defendants

Mr.Y.D. Mulani for the Plaintiff.

Mr.Leon Samuel i/b Advani & Co. for Defendant No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 29TH NOVEMBER, 2005.

P.C. :

1. The suit is filed to recover an amount of Rs.9,10,414/- together with interest on the principal sum of Rs.5,75,000/-. The receipt dated 17/05/2001 was executed by defendant No.1, acknowledging receipt of the amounts by a cheque dated 17/05/2001, repayable on 14/10/2001. Defendant No.1 also executed a demand Promissory Note for the same.

2. Thereafter defendant No.1 issued a cheque dated 14/10/2001 towards repayment of the said amount. Defendant No.1 also executed an undertaking that the cheque would be honoured. Defendant No.2 is the son of defendant No.1. He has executed a personal guarantee agreeing to repay the said amount. The

guarantee is dated 17/05/2001.

3. The cheque dated 14/10/2001 was admittedly dishonoured.

4. It is the plaintiff's case that subsequently defendant No.1 issued two cheques dated 18/12/2001 and 01/03/2002 in the sum of Rs.2,00,000/- and Rs.3,75,000/- towards repayment of the said amount. Admittedly, again both the cheques were dishonoured, as there were insufficient funds in the account.

5. This Summons for Judgment has been taken out against defendant No.1. Defendant No.2 has not been served. The Summons for Judgment is, therefore dismissed as against defendant No.2 with liberty to file a fresh summons for judgment.

6. The defence raised by defendant No.1 is that the amount received by him was actually for the benefit of defendant No.2 - his son and that he has not utilised the said amount. That can never be a defence to the plaintiff's claim. The plaintiff is not concerned with internal arrangement between defendant Nos.1 and 2 to which admittedly the plaintiff was not a party.

7. It is submitted on behalf of defendant No.1 that there are disputes and differences between defendant Nos.1 and 2. These disputes and differences arose after the suit transaction. The Plaintiff is not concerned with these disputes either.

8. It was lastly submitted on behalf of the defendants that the said cheques dated 18/12/2001 and 01/03/2002 were issued in consideration of a loan of Rs.5,00,000/- given by a cheque dated 12/01/2001, issued by plaintiff in favour of defendant No.1. But admittedly, that cheque was never encashed. There can be no question, therefore, of repaying any amount in consideration of a cheque which was never encashed.

9. The fact, therefore remains that the plaintiff has not been repaid the amounts lent and advanced by the said cheque dated 17/05/2001. This is admitted on behalf of the defendant No.1.

10. In the circumstances, there is no defence to the suit.

11. The summons for judgment is made absolute as

against defendant No.1 and the suit is decreed as prayed. However, the interest after the date of the suit shall be at the rate of 12% p.a.

12. In the circumstances there is no question of the suit being barred by the law of limitation, as during the subsistence of the period of limitation, the fresh cheques were issued.

13. Plaintiff undertakes not to execute the decree against defendant No.1 till a summons for judgment is taken out against defendant No.2 and the same is finally decided.

14. It is made clear that the disputes and differences between defendant Nos.1 and 2 interse have not been considered by me in any manner whatsoever even for the purposes of this summons for judgment.